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MEMORANDUM

DATE: September 18, 2003

TO: Council Member Gary Schiff, Chair, Zoning & Planning Committee and
Members of the Committee

FROM: Carrie Flack, City Planner

SUBJECT: Appeal of the decision of the Zoning Board of Adjustment by Azzam Omar
Sabri
BZZ 1238 – 2000 Fremont Avenue South and 1309 Franklin Avenue West

Azzam Omar Sabri has filed an appeal of the decision of the Zoning Board of Adjustment. The appeal is associated with the decision of the Zoning Board of Adjustment to deny the requested nonconforming use certificate to allow two principal residential structures on one zoning lot.

The appellant has stated that the decision is being appealed because during the salient timeframe (1994-1998) when Glenn Cervasky owned the property, the property was never abandoned nor did the owner discontinue to seek rentals or repair for the property. Therefore, the appellant believes the City's allegations in a letter from city attorney Stuart Browne is not based on any factual information. In addition, the appellant states that the city continued to issue permits for the improvement of both properties fully aware of the status of the property. The appellant seeks to subdivide the property in order to maintain and occupy both houses on the property. The appellant's complete statement of the action being appealed and reasons for the appeal is attached.

At the August 6, 2003 Zoning Board of Adjustment meeting, six Board members were present and all six members voted to deny the nonconforming use certificate to allow two principal structures on one zoning lot. The actions from the August 6, 2003 Zoning Board of Adjustment meeting and the Planning Department staff report are attached.

HEARING AGENDA

Minutes

August 6, 2003

Minneapolis Board of Adjustment:

Ms. Debra Bloom
Mr. David Fields
Mr. John Finlayson
Mr. Paul Gates
Ms. Tonia Johnson - Absent
Ms. Marissa Lasky
Mr. Barry Morgan – Absent
Mr. Peter Rand
Ms. Gail Von Bargaen

The Board of Adjustment of the City of Minneapolis met at **2:00 p.m.**, on **Wednesday, August 6, 2003**, in **Room 317 City Hall**, Minneapolis, Minnesota, to consider requests for the following:

1. 2000 Fremont Avenue South and 1309 West Franklin Avenue **(BZZ-1238, Ward 7)**

Azzam O. Sabri has applied for a nonconforming use certificate to allow two principal residential structures on one zoning lot located at 2000 Fremont Avenue South and 1309 West Franklin Avenue.

BOARD OF ADJUSTMENT ACTION:

Mr. Rand motioned to **deny** the nonconforming use certificate. Mr. Fields seconded the motion.

ROLL CALL VOTE:

Yeas: Bloom, Fields, Gates, Morgan, Rand, Von Bargaen

Nays: None

Absent: Finlayson, Johnson, Lasky

The Board of Adjustment adopted the staff findings and **denied** the nonconforming use certificate.

HEARING Minutes & Testimony

APPEAL from August 6, 2003

BZZ-1238 – Azzam Omar Sabri

Staff (Carrie Flack) presented the staff report and recommendation for 2000 Fremont Avenue South and 1309 Franklin Avenue West.

Bloom: The applicant is invited to speak.

TESTIMONY

Question in the procedure, I am Mr. Sabri's attorney, can we both testify?

Bloom: You both can testify, we ask that you introduce new information and not repeat the previous speaker(s) and keep the testimony precise. Thank you.

Applicant – Azzam Omar Sabri: I would like to start with giving you an affidavit from Mr. Cervasky to each one of you. I would like to thank you for giving me the chance to talk. The facts were stated by Ms. Flack very well. I would just like to add very short things. I am a neighbor of the property, I live a block away from there. I have been living there since I left Northfield, which has been 27 years. I have been living in the same house and I have been observing those properties for the last 27 years. I expressed my concern about those houses, as they affect my house and its value. There were no responses from the previous owners that they were working on them. I took it upon myself to do something about it by trying to work a deal where the owner would even speak with me. The neighbors will tell you, Mr. Cervaski was very hard to talk to, he was very unkind to people and was not very congenial. If you speak with him, he would ask you not to get in his business. So, it was an effort to even have a chance to speak with the man. When Tom Schwartz lost these houses in court, I was aware that it again was going to be empty and again abandoned by the city's definition. But, it is actually a lapse of occupancy, a lapse of work being done, because Mr. Schwartz was working on the houses while living in the one at 1309 Franklin and working on the other. I realized this would stop, so I offered myself to be available to do something about it. I would like to buy it, work on it and you could pay me, he said "no, no", so finally we agreed that I would buy it. The lady that lives next door on Fremont came to me very happy that I did buy those houses. She said what if we destroy one of those houses you have bought. I am a neighbor and whatever you decide, I am with you. If you want to destroy one of those houses go ahead, you can speak about it to the neighborhood and I'll comply. I have nothing emotionally obsessed with those houses; I would just like decent houses next to me. So, she asked how much money would I take. At that time, I had not done anything to the house, just clean it and what have you. I had not started renovating it seriously. So, I said I would take that much money. She said she would come back to me because she is on the neighborhood board. Nothing came back from Ms. Walker, Leslie Walker. I had no choice but to proceed. I went to the city and started seeking the permits. I have spent over \$150,000 without occupying any of the houses. They were really in very bad shape. I fixed them seriously. The houses speak for themselves. I did not seek any CO unless it truly and rightfully deserved the CO. The inspector was overwhelmed. He said, you need to pull the electrical main line permit for it to be closed and it would be done. That is what we did and the CO was awarded. The other house of course the city said no to the CO, even though we have fixed it. So, I said okay, now it is the right time to speak with you because I do not like to be talking about things that I cannot show. I think I have showed the quality of work that I can do on these houses. I think that the neighborhood should have some people of color who have different budgets. I think we have a neighborhood (that I live in) that has a set mind of certain budgets that people should have to come to Kenwood. I respect that but I do not think that it is fair. I think there should be a chance for people who can afford these kinds of houses to move in and live there with the houses being in the shape that they are in now. This is the first time within the 27 years I have lived in my house that I went to the neighborhood meeting to give them a notice. I am required to give a notice to the neighborhood that I am applying for this. The city council lady came in and said that whatever you decide I will do. I thought that was inappropriate. Who are you to decide, seven people, eight people? I could ask for the whole neighborhood to be involved and invite everyone in the neighborhood to come and check on how those houses should be looked at. After the city council lady left, a lady who was candidate for President of the neighborhood, her name is Ms. Dayton, Vanessa Dayton, stood up and took her papers and said I am out of here. I don't want to be President of this neighborhood. This is a prejudiced neighborhood and I have no time for that. We should thank Mr.

Sabri for what he did. Didn't he do what we had been asking for many years? I hope you find some justice somewhere in your heart, and she left. And, I leave you with this.

I am **Keith Hanratty** and I have had the pleasure of knowing Mr. Sabri for several years. I thank the Board of Adjustment for their expertise and wisdom in this matter. I believe that the root of the problem, and a matter that the city attorney made an allegation, is that the property was declared abandoned in response to political pressure from a neighborhood group. This group of people convinced the city attorney to write a letter offering opinion that has no basis of fact. The opinion sent by the city attorney was not directed to the owner of the property at that time. Mr. Cervasky was not notified (please note that), even though he was the fee owner. It was directed to Mr. Schwartz. It claimed that the house was abandoned by the owner for more than one year. The city has never produced any proof whatsoever of abandonment. They have only concluded that the property was abandoned in attorney Brown's letter from November 4, 1998 to Mr. Schwartz. The findings presented to the Board show that the owner was issued a rental license each year, 1994 through 1999 for both structures. While the buildings were not pretty, they were not abandoned as the records will show. Please carefully look at it. You will note the activity in the file. Note all the repairs and note that there are open complaints that are closed, that there was somebody there. It was not abandoned. This is not an issue of fact. Please look at the totality of the circumstances here. These houses were in bad repair. Mr. Sabri who came from Jerusalem to this country has worked consistently. He is a repairer of things and that is what he has done here. He has worked and done major renovation on both structures and has invested a substantial amount of money, time and effort using his own hands to fix these properties. The affidavit from Mr. Cervasky is most illustrative. Mr. Sabri got a chance to talk with him and now we have given you this affidavit and this should set the matter straight. It was never abandoned. The guy was old and has a hard time. These properties were under construction. They were not pretty, but they were not abandoned and that is apparently the issue here. The city attorney had no basis to say that. Anyway, since we have the letter from the city attorney, here we are. What has happened since then? Mr. Sabri has bought the property and has fixed it. He has corrected so many code violations by the city it will spin your head, just look at them. He has complied with each and every one. These properties are very good looking. I have gone through them. They have marble floors, they have brickwork outside, they are freshly painted, they look beautiful, and are a nice place. We have got a rental license for 1309 Franklin. People are living there and this is good. People are used to the fact that these properties were abandoned before and there is a hangover in the neighborhood from that. There are also some allegations against Mr. Sabri which should not be taken out on the property. He is a good man, has worked here, went to Saint Olaf College and has been a substantial citizen. He has been down in Northfield and has worked there. He has been a substantial citizen in this community, has developed a good reputation with many, many, many neighborhood people, and he has been around longer than most of them here. I would just like to emphasize that this unfair treatment that has been directed at Mr. Sabri has caused him considerable expense that the city may be liable for because of the unfair statements of a particular council member. The buildings were once an eyesore and are now fully restored and ready to be occupied. Your tax base will improve. They look just like they should be in the neighborhood. I have lived here since 1954 and if you look at the houses they don't look any different than any other house now. There is not a problem.

Bloom: Excuse me. We appreciate all this information. Can you speak specifically to the issue before us, which is the non-conforming use. Essentially, the opinion is that if the use has been discontinued for more than one year, we need evidence that shows that this use has been constant and has not been discontinued for more than a year due to circumstances outside of the property owner's control. That is what we want to speak to at this hearing.

Keith Hanratty: I will direct my attention to that with regards to that issue. Look at the affidavit in front of you. Also look at the fact that there is a rental license issued every year. Look that there were code violations that have been fixed. Also look at the fact that there have been permits pulled. You have also heard from the city staff in the findings. Please pay careful attention to that because they have stated that there is no evidence that they have been abandoned. This is a question. What we have here and the root of the problem again, is the city attorney. What I think happened is, the city attorney knows Lisa Goodman. She called him up, she doesn't like Mr. Sabri and he wrote a letter. It wasn't based in fact. There is no factual evidence that show these properties are abandoned. Only an opinion by the city attorney. There was no basis of fact that the non-conforming use should not be in effect now. All we have is the city attorney's letter. This is not the position of the city. They have no opinion on it this. It is up to you.

Bloom: The facts are this affidavit and then this letter and then the information that Carrie has gotten for us.

Assam Omar Sabri: The city has failed to substantiate and to prove that these properties were not continuously occupied, fixed or trying to rent them. These three categories, either occupying them, trying to fix them, trying to rent them. These will satisfy the fact that they were not abandoned. These properties have never been abandoned within the definition of abandonment that should be considered by you ladies and gentlemen. The city has failed to define what is abandonment. I challenge the city of Minneapolis here and in any court of law. If they could make that available to the rest of us lay people, what is and what do they mean by abandonment? So, they were asked and really have failed to show or to define abandonment. They say no one was living there. They depend on the licenses and they depend on the work permits. The testimony of the previous fee owner, which is Mr. Cervasky, is that he did lots of work, which he thought he didn't need to pull a permit for. That really is something the city would never have known. That this man is working there. The near neighbors nor the city wouldn't know if he was trying to rent them or fix them. That is something that lacks proof or lacks substance.

Bloom: I have given you considerable lead way. Do you or don't you have something that is new to introduce.

Keith Hanratty: Three things. The properties were never boarded up. The letter of the city attorney is 1998 as opposed to 1994. Isn't that odd that four years after that they get a letter? It is very unusual, kind of political, don't you think?

Bloom: Please stick to the facts. Do you have anything new to introduce? We have spoken for almost 20 minutes and we have a number of people that would like to speak. I have given you considerable lead way, anything new to introduce?

Assam Omar Sabri: We don't want to bore you. I will keep it brief and sweet. We should give the time on the floor for other people, but if something comes up here, we want to be able to explain it.

Bloom: We have heard from the applicant. I would like a show of hands, how many people are here to speak to this item? I have given the applicant and his attorney 24 minutes at this point. I would like to try and give you equal time. I ask that when you speak, please, if your neighborhood or the person ahead of you has said the same thing, please don't repeat what they said. We want to hear you and I

would like the Board to have an opportunity to have a discussion, but also I want to make sure we are getting to the point of the non-conforming use certificate and the question of continuous use of this property and abandonment. Is there anyone in favor of the applicant? Come to the microphone and please state your name and address.

Mericki Alherone: I am an architect. I have lived in Minnesota for the past four years and my address is 1905 Girard. I have been back and forth in the area and have done some work around here. I noticed as a neighbor today that the property the last four years before Mr. Sabri took it over was in really bad shape and he did a good job, a magnificent job. He took some of my advice on the building. It was really a wreck structurally, architecturally and finishing material wise. I look back and forth on the permits and notices from the inspectors and I believe that if you talk about the land use of this property and the surrounding, I believe that this land use is maybe 60% of the total area of the land, and other land use next door is 80-90% of the lots in the area. As a residential unit the way it is going is way less occupied.

Bloom: Do you have any comments on the non-conforming use certificate, which is essentially two dwelling units on one lot.

Mericki Alherone: I have been back and forth and I have seen it. Its been occupied or under renovation for maintenance most of the last four years. I came here in May 1999. That is what I can say. Thank you.

Kent Stearns: I own the property directly behind the properties in question at 2001 Girard. I have had that property since June 2001. During that period of time there has been a good deal of work going on. That is what I see and I do appreciate that Mr. Sabri has been fixing it up because I am in close proximity of that. Thank you.

Leonard Dahlquist: I live on the block as well. I own a triplex at 2011 Girard. My family has owned this property since 1960. I don't really know of anyone that has been around here longer. All my life I have seen those properties used, until the late 90's. The block still has all the original homes that were built there – not one has been torn down. The only trouble before this was a home that was at 22nd and Fremont, which was condemned at one time and boarded up, but that was brought back even when people stole the stained glass. Then they brought it back and it is just beautiful right now. The homes (2000 Fremont and 1309 Franklin) were built in 1900. Two homes on one lot was legal back then. Almost 100 years they have been legal and rented out. Just because there was trouble with one landlord I think it would be too bad to take away the rights (to occupy both dwellings at the same time) permanently and never let those homes be used again. Right now it is one or the other. If they are never restored, then one of the homes will get destroyed or maybe both. I think it is really neat living on a block where all the homes are still original and there is people putting lots of money into them. It is just great seeing everyone just pouring their money into these homes – these mansions and getting them going. Sabri has been doing that to both of those homes. He has really turned them around and they really look great. I just hope that we can keep all the homes going. This is a historical block. Otherwise it will just get dismantled like Dunwoody Mansion. I am the current owner of the triplex on the block and live in the triplex. A previous speaker said the property has been empty since 1994 and I know it was occupied after that. It has never been boarded up and there has always been activity there.

Nicholas Heimer: I would like to say that I know this man and I just moved to the city one year ago. This is a beautiful city and that is one of the most beautiful areas in the city. And what he is doing is very good for the area and I would like to see both of the homes able to be rented out.

Bloom: We would like to invite people up who are opposed, or have questions for the applicant or about the application. Please come up – those who are opposed to the application.

Ed Newman: I am the President of the Lowry Hill Residents, Inc. Lowry Hill Residents, Inc. would like to state its opposition for granting a non-conforming use certificate. Mr. Cervasky lost the certificate, his grandfathered use, between 1994 and 1998. Later speakers will be presenting the proof about exactly under what circumstances and how and what city records supported the city attorneys position. This isn't an issue with Mr. Sabri. I think Mr. Sabri has done an excellent job restoring them. This is a legal issue about whether somebody can get a non-conforming use certificate for a grandfathered use that they have lost. It is the position of the homeowners association that the answer to that question is "no" and the next speaker will address that. We're opposed to it because of the precedence that it could establish inside the neighborhood with a lot of the old, larger homes that have to live within the restrictions of the R2 zone. We are proactively interested in a solution to this problem. Still, it has been a property that has been discussed for over a decade inside the homeowners association for a variety of reasons. I would like to introduce John Cairns who is a member of our Board and the last President of the Board of Lowry Hill Residents, Inc., and will address the legal side of this issue.

John Cairns: I first appeared in front of the Board of Adjustments in 1966 and chaired the committee on the City Council. I have been in front of this board and city planning 37 years too long. This board gets less appreciation for their hard work than any other board I have worked with in the city, so I appreciate your time in doing this. Briefly, keep in mind as I talk here that there is a difference between discontinuance and abandonment. So that is where I will start. I will start with Ms. Flack's report on the second and third page of her report where she gives her findings. Items #5 and #6 go to the intent of Mr. Cervaski, which is the confusion here. It is not the applicant's intent that would have made any difference here. It is Mr. Cervasky's, because the building was discontinued during his use. So, what Mr. Sabri did is beside the point. I am glad to hear that Ms. Flack's report noticed/recognized that these two findings are really not relevant to the issue before you. Mr. Sabri on Mr. Cervaski's behalf or Mr. Cervaski would have to convince you that he did not discontinue occupancy or that discontinuance was due to factors beyond his own control. Chapter 531.42 is the nub of this whole debate. I did look at Mr. Cervaski's letter dated June 8, 2003 and I didn't have a moment to match it line for line with the affidavit (August 5, 2003), but I don't think they are contradictory. I am looking at the letter in the city staff report, page 7 dated June 8 03, and I want you to look at the language in the second paragraph. "I wish to indicate now that anytime the above dwellings were not occupied, they were being repaired." In order to protect this right, there must be a showing by Mr. Cervasky that the use was not discontinued. The use is occupancy. I don't think that there is any question that the building was unoccupied for more than twelve consecutive months, in the years of 1994 to 1999. Not only based on the data you have from the file, but also if you look at Ms. Cleveland's affidavit, which deals with the Water Department records, you will be even more convinced. There was no water service at 1309 Franklin for several years and therefore, it could not possibly be occupied during that time. Activity on the property is not the question, it is the use. The issue is not abandonment, the issue of abandonment has nothing to do with this case. The issue is could Cervasky have done something except for the factors out of his control? The second part of his letter in the city file acknowledges that he could make repairs. No one was preventing him from making repairs and nobody was preventing

him from going up to code to reoccupy the property. There were no third party factors preventing him from doing that. So, he cannot qualify or Mr. Sabri instead, under the language of circumstances beyond the property owners control. So, this case actually turns out to be a lot easier because of Mr. Cervaski's letter and his affidavit is not contradictory to his letter. He had every opportunity to repair the building and every opportunity to establish the use. Clearly it was discontinued there cannot be any argument about that. So, don't get mixed up between the stumbling or the interlocking of discontinued and abandonment. They are two very different concepts. The use was discontinued. There was no third party bar for Mr. Cervasky to rehab it or to reuse it. It was discontinued for many months, years, certainly more than twelve months. Look at the Water Department records. As you see in Ms. Cleveland's affidavit and the copy of the Water Department records, there is no question that the building didn't have water service at 1309. The last point I will make to you is this, there are two different buildings. Our point to you is that 1309 was not occupied and the use was discontinued. There was no reason that Mr. Cervasky could not have repaired it to a point to get a CO. The fact that he got a license is neither here nor there. No CO, certificate of occupancy, no water service, shows the use was discontinued. Abandoned or not that does not make any difference. Any evidence at all that he could not repair the building based on circumstances which he had no control is your ordinance standard. And in fact the opposite is true. Mr. Cervasky's own letter confirms that he could have made repairs and claims to be doing so. But his letter does not say that 1309 was occupied. That means he did not establish the use. Your job is to do things and to say to people what they can do based on the rules, which you do an excellent job of. This is very clear, the use was discontinued, there was no reason Cervasky couldn't have repaired it, in fact he tells us he was trying to do it, but he did not establish the use. It was not what he intended to do, and certainly nothing about what Mr. Sabri intends is relevant at all. Was the use not reestablished because of something he couldn't control? There is no evidence of that. In fact to the contrary, it says he could have done it if he had wanted to. By not doing so, he has not been able to establish that use. Thank you.

Julie Johns: I strongly oppose this request. I have lived at 2016 Fremont, three houses south of the property, for the past twelve years. I am also the block club leader for our block of Fremont and I also serve on the Lowry Hill Neighborhood Association Board. I was asked by my neighbors to be a liaison with the city and the board about this property. I have been involved in countless meetings, phone calls, and emails regarding this property over the years. As we have all heard, the code says that if a non-conforming use is discontinued for more than one year, it is considered abandoned and cannot be reestablished. I am presenting to you right now an affidavit that is signed by seven neighbors that live close to the property affirming that 1309 West Franklin was continuously vacant, not improved or maintained for a period of 3 ½ years. It reads, "We offer this affidavit to demonstrate and confirm that for the period from 12/94 to 10/98, we did not see any activities at 1309 that could be regarded as an indication by the then owner that he did not intend to abandon his rights to occupy both buildings. Our attention was drawn in particular to 1309 because of the general disrepair and absence of any occupants. The recollection of each of the undersigned is that 1309 was continuously vacant from late December 1994 when the tenants moved out to and through 1998, when Tom Schwartz who apparently had purchased an interest in the property moved in. To the best of our recollection and knowledge during the time period when no one lived in or at 1309 no improvements were made was 1309 maintained. In fact the physical condition of 1309 deteriorated during that time period. From time to time one or more of us made telephone calls to the city regarding tall grass and un-shoveled sidewalks, which is also part of the record." The neighbors have been frustrated with this property for nearly a decade. We have had a long history working with the city to address problems and enforce the code for it. Beginning back in June 1996 after 1309 had been vacant for 1-½ years, neighbors met with then City Council representative Pat Scott. She recommended that we contact the Lowry Neighborhood

Association to see if NRP Funds could be use to help defray the cost of demolishing 1309. I would also like to present a letter that was sent by neighbors to the Lowry Hill Neighborhood Association signed by 33 neighbors living close by the property, stating that the property had been vacant at that time for 1 ½ years from late December 1994 to June 28th, 1996 asking if NRP Funds could be made available to help demolish the house. The 1309 West Franklin house then remained vacant, unmaintained, and unimproved for two more years until Tom Schwartz bought the property in October 1998 and moved in. The neighbors were concerned about this development and we met with representatives of LHRI, Council Member Lisa Goodman, the assistant city attorney, representatives of zoning, and inspections on October 28, 1998. We were assured again that the non-conforming rights had been abandoned and that the two buildings could never be simultaneously occupied. Several days later on November 4th the assistant city attorney, Stuart Brown, who we had met with, sent that letter to Tom Schwartz who was the owner informing him of the loss of non-conforming rights. You have that letter in your packet. Sometime in early 2001, Tom Schwartz moved out of 1309 West Franklin and the ownership reverted back to Mr. Cervasky. Beginning in May 2001, Mr. Sabri began to work on the property and we were informed that he had purchased the property from Mr. Cervasky. Again the neighbors were concerned. We met with Council Member Lisa Goodman and representatives of inspections and zoning on November 1, 2001. Notes from that meeting are included in your packet. Again we were assured that the property lost its non-conforming rights and both buildings could not be simultaneously occupied. We were told that Mr. Sabri also received a letter from the city informing him of loss of non-conforming rights. Neighbors today will also attest to the fact that they personally informed Mr. Sabri, both before and after he purchased the property, that the property had lost its non-conforming rights. Despite this he has continued to work on both houses. He could have rebutted the loss of non-conforming rights before he worked on the houses but he chose not to appeal to this board until now, almost two years after he purchased the property. However, really that is irrelevant, as John Cairns has pointed out, because the abandonment of the property occurred while Mr. Cervasky owned it. And Mr. Cervasky has the burden of proof to provide evidence that the property was not abandoned and due to circumstances beyond his control. Mr. Cervasky could have appealed to this board, but never did. Thank you.

Nancy Kleeman: I have lived at and owned my house at 2008 Fremont Avenue south since October 1985. We are one house removed from the property in question. First, Mr. Cairns is going to hand out an affidavit from me that includes a copy of the Water Department records and he will also be submitting for the record an analysis of the situation by another Lowry Hill Board Member. I concur with Ms. Johns testimony and in fact signed the neighbors affidavit as well as my own. I recall a conversation with Tom Schwartz in October 1998 about his dealings with the Water Department and having to get the water turned back on at 1309. Last Friday August 1, 2003 I visited the City of Minneapolis Utilities Billing Office and talked to Robert McBride. He provided me with a copy of the water records for 1309 from August 1995 through 1998. They are attached to the affidavit that John is handing out. The records show that water service was discontinued at 1309 in March/April 1995, the tenants having moved out in December 1994, and was not reinstated until/around October 20, 1998. The records note that on August 14, 1995, Glen Cervasky called stating that the water was turned off at the street. They continue to note that Jay – per Kristi and ESY the water was found off August 14, 1995. Then Roger, per the ESY the water is off at the street so I set up a pick reading for 8/16 between 12 and 2 p.m. I'll check tomorrow to see if the water was turned off, the customer said it was March or April. September 21, 1995 again Roger, the water was turned off approximately 3/10/95. Then on 12/30/98 Tom Schwartz called to state he had water back on in October around the 20th. When ESY was out doing the same for two other properties that he had bought. Our records still show that the account is being inactive – scheduled a pick for 1/04/99 to get reading, will require catch up bill.

These water records also state that a meter reader visited the property on June 223, 1997 and noted that quote, "The house looks vacant and locked." From my personal observation, and also from the water records, there is no question in my mind as a neighbor that little if any work was done during the period of 1994 to 1998, in fact the property deteriorated further and I personally had to call the city several times to cut the grass and clear icy sidewalks. There was nothing done. These properties were clearly not in residential use for that length of time. Thank you!

Bruce Walker: I live at 2006 Fremont, next to the properties in question. I wanted to state first of all that I don't have any ill will towards Mr. Sabri. But I did want to state that after speaking with Lisa Goodman in 1998 we were told that the house had lost its non-conforming status. When Mr. Tom Schwartz had acquired the property, it seemed that he was unclear about that loss of non-conforming status. As a result he was unable to make the properties work financially and therefore lost them. So, when Mr. Sabri was considering the houses and began looking at them, I wanted to make it clear to him. I didn't want another situation like that. My understanding was and I had been informed by the city council woman, that because the house had not been used and was abandoned for more than one year, that the nonconforming status had lapsed. As council member Lisa Goodman said, no one would be able to occupy both houses on that property simultaneously. That is all I have to say.

Bloom: Anyone else who would like to speak?

John Cairns: Just one quick short comment regarding the Stuart Brown letter. His letter says very simply, the use has been discontinued. I don't think there is any controversy really regarding that. It doesn't say anything about whether Mr. Cervasky or Mr. Schwartz or Mr. Sabri could try to use the reestablishment part of section 530.40. But we know he can't because he can't establish third party reasoning to finish the work. It says very simply it was discontinued, and everyone seems to agree on that. The question is, can they reestablish it by something that Cervasky did or couldn't do because someone kept him from doing it.

Richard Kalin: I live at 2009 Fremont, one house away from 1309. I have lived there since July 1991. During the spring of 2001, before Memorial Day weekend, I noticed Mr. Sabri directing the activities of several work people at 1309. As workers repositioned ladders, they blocked my access to Fremont Avenue. Mr. Sabri advanced toward my car. I said to him, "You know that both houses can no longer be rented out. I don't understand why you are putting all this money into it?" His response with a shrug and a smile was "We'll see." I bring this up only so that all of us can be aware that Mr. Sabri really did know in 2001 that there was no occupancy permit for both houses. And rather than bringing this to you then, he waited to invest \$150,000 to make his case as strong as possible. Thank you.

John Day: I live at 2005 Girard, which is directly across the alley from the property in question. I want to address the principal issue here, which is the discontinuance of the use. I have lived in our house since July 1992. I always drive by multiple times per day, the property in question. There is absolutely no question that it was not used for the period that we stipulated in the affidavit.

Fran Davis: I live at 1512 Douglas. I am on the Lowry Hill Board, and the zoning chair for the Lowry Hill Board. I just wanted to reiterate that this is not a discussion about Mr. Sabri's use of the property. It is something that started with Council Member Pat Scott, the original owner, and the problems that we had with that property. I encourage you to think in terms of the precedent that this would set if non-

conforming uses could once be abandoned and then reinstated three or four owners later. Thanks for considering it.

Keith Hanratty: There used to be parking on Franklin Avenue and 1309 has a sidewalk going across the boulevard for parking. But there is no parking on Franklin Avenue anymore. This is one thing that bothers the neighbors. That people cannot park there. The old landlord, I believe that he was mentally ill. The rights to the property being lost should not be because someone was mentally ill.

Bloom: Please sit down. If this is directly related to the issue at hand and is new information you certainly can speak at this time. Otherwise we are going to close the public hearing.

Azzam Omar Sabri: Mr. Cervasky had a nice long opener for the water, which is available on the property now. If the city closed it – he would open it. So, please look at the readings, I still have it there. I asked him what is this big thing? Don't you ever get rid of it? If they shut the water off, you turn it on.

Keith Hanratty: Let's look at the mental illness issue – the guy was not all there. It was beyond his control, he was crazy.

PUBLIC HEARING CLOSED

Bloom: Board Members discussion.

Gates: We have just been inundated with data here. I am trying to listen to the testimony and at the same time I am trying to process the new information. About half way through the presentation of additional data, I kind of through up my mental arms and thought I cannot process any more information in this context. This is a general comment about the process and how we receive data. I think right now that that process is not working. In these circumstances I tend to put more emphasis on what I receive in the packet from staff, because I have had longer to digest that. With that, I have a question for staff about the breezeway. I didn't hear any testimony in any of this about this breezeway that was apparently granted a permit and then revoked. And I am not sure if this is relevant or not, but I have a question about this. This is an R2B zone, right? So, two units are acceptable on that site? Is that correct, if they are in the same principal structure?

Blake Graham: Two dwellings would be authorized but not in this case on this particular lot.

Gates: Because they are two separate principal structures?

Blake Graham: They are two principal structures. That is the issue of nonconformity. I am with the Planning Department and I worked with Ms. Flack on this report. The lot area is not sufficient to establish a new two family dwelling. It is only 6,300 square feet and the district requires 10,000 square feet and the allowable variance is only 30%, which wouldn't get you down to 6,300. So the breezeway permit, although a creative way of trying to address the two principal structures and thereby eliminate one and go to one single principal residential structure, was not a legal remedy to the property. In addition, the breezeway permit was issued in 2001 and what I really wanted to address to this Board is that all the work that was done by Mr. Sabri, as fine as it may have been and is, the property does look rather nice now, is irrelevant to the question before the Board. The question before

the Board remains, was the discontinuance of this use between 1994 and 1998, which establishes the presumption of this abandonment, and in spite of some of the words you have heard from certain speakers today, that abandonment is not an issue – it clearly is an issue due to circumstances beyond the owner's control. Our ordinance talks about presumption of abandonment arising upon discontinuance of the non-conforming use for more than a one-year continuous period. I think it is clear that discontinuance did occur. The water records alone show a 3 ½ year period, strong evidence of discontinued use – from March of 1995 to October 1998. Staff did not provide a recommendation, because we wanted to receive additional information and testimony. We thought there may be more information that we did not have available to us. In fact, we obtained the water records late last week after this report had been printed. If that information had been before me at the time we were writing this recommendation, you may have received a recommendation at that point. The question remains was the discontinuance of the period between 1994 and 1998 due to circumstances beyond the property owner's control. The Planning Department and staff report makes a finding that there is not sufficient evidence in the record to substantiate that the discontinuance was due to circumstances beyond the property owner's control. I want to clarify that the reason the staff report made no recommendation, is not that we were thinking we should approve this non-conforming use certificate. We simply wanted more information. I am not an advocate one way or another on this, not part of the neighborhood, we need to look at the objective facts that we have before us and apply the applicable law, including the rebuttal of the presumption of abandonment. I have not received any additional information here that would rise to the level of clear and convincing evidence that discontinuance was due to circumstances beyond the property owner's control, including the affidavit that was submitted by Mr. Cervasky. Many of those findings are opinions, they are conclusions and I don't think that we really received anything factual today that would lead this Board to make a finding that the discontinuance was due to circumstances beyond the property owner's control. So the question before you now is whether you are going to continue this if you'd like more time to digest or do you want to approve the non-conforming use certificate or do you want to choose to deny the non-conforming use certificate? If you choose to approve it, you will have to develop findings that in fact there has been evidence submitted to you that is specific and is clear and convincing that the discontinuance of at least the 3 ½ period, remember it only takes one year period to establish the presumption of abandonment, due to circumstances beyond the property owner's control. If on the other hand the Board chooses to deny the non-conforming use certificate, I believe you may simply adopt the findings of fact that are in the staff report. Finding #6 does say, although there is evidence that the property owners did not intend to abandon the non-conforming use (records we had for rental licenses and the one permit activity at 1309 during the period in question), there is insufficient evidence in the record to find that the discontinuance of the non-conforming use was due to circumstances beyond the property owner's control. That finding alone would be a basis for this Board's decision if you want to choose to deny. So that was a long-winded response, Mr. Gates, to your question about the breezeway permit. I did want to take the opportunity to explain the staff's report to you.

Fields: I do agree with Mr. Gates that we have been inundated with all the affidavits, testimony, and required to digest it while sitting here. There is no way to do business on an item when apparently there are so many intense feelings. I don't know what to do about that, but as a Board we should start taking a stand on when we get information. I know one alternative, like Mr. Graham said we could continue it. I am not going to advocate that right now. I am going to also follow up with Mr. Gates that I have to go by the staff report and I want to compliment Ms. Flack for considering, I think having to prematurely present this to us – she did a good job. I haven't seen any evidence before me that would really contradict what the staff report presents. I have been on this Board for two years and I would like to acknowledge the ability of my colleagues to really sort out what the issues are. We are

often told what they are and we have been dealing with this for so long that most of us here maybe early on in the testimony knew what the issues were. Basically, do we have evidence that a non-conforming use was actually continued? I don't see it, but I will give you a little reason why I don't see it. I think it is very difficult to define what is meant by abandon or discontinued use, and because it is so difficult to identify, the burden of proof naturally falls on the applicant. Otherwise, nothing can be monitored all of the time, everything just appears a certain way and doesn't match, doesn't necessarily mean that that is the actuality of the situation. We've had incidents here where businesses have been run out of residence districts. How do you establish if that is the truth or not? The best that we can do is follow a trail of evidence of licenses, permits, etc. But I think we are all aware also that it is easy when someone wants to evade legally establishing a use they can evade getting licenses and permits. So we are left with anecdote, gossip and rumor and that is what makes this Board so interesting. Neighbors telling what they have observed over the years, I have to give as much credibility to that as often as I do the actual affidavits. I do see frankly, that there was discontinued use. And this again has nothing to do with admiration for the efforts to restore the property. I think it is best said by Mr. Barry Lazareth in 2nd to the last full paragraph, when he discusses the precedent. From a legal point of view he really explains what I am going to support, the discontinuance of a non-conforming use.

Rand: I believe an action should be on the table first. I am going to move to deny the non-conforming use certificate. With regards to proving the multiple occupancy and so on, it is my observation that you can still drive even though you fail to renew your drivers license, but that doesn't make your driving legal. In other words there are incumbent responsibilities on each of us as property owners, people to behave in certain ways, regulations and to get permits/permission and so forth. And even one of them would be to have water supplied and electricity to be supplied. That did not exist and therefore I have no trouble with the evidence about the non-conforming use. The trouble here is I don't care. I care about tomorrow. There are two buildings down there. They are big buildings on Franklin Avenue and they are kind of nice buildings. And as the one person said, they are original structures from one hundred years ago. So we deny this thing. What does the current property owner do – tear one down for nothing more than to accommodate an administrative ordinance and legal redress because that is the way you are suppose to do it? I don't like that solution. I like a solution better targeted at making people behave correctly, giving people 90 days to make this property in good use (get a permit). I don't see those properties as boarded up drug houses like I have seen in other cities. Here we have an asset and everybody is there to protect Lowry Hill Association's interest. And everybody is set to do things the right way and according to the ordinance. They want to get those i's dotted and t's crossed. I think it's sloppy that it has gotten to this point, but I think that now we should be focused in the Planning Department. Surely we should be focusing in on what can make this a better street. Franklin Avenue is a street that should be made better, made better by improving these properties rather than tearing them down.

Bloom: Motion on the table to deny the non-conforming use certificate.

Fields: I Second the Motion.

Gates: I agree with comments from Mr. Fields and Mr. Rand. I really hate to be part of a process that leads to the likely demolition of a perfectly good and viable house. And it seems to me that the process we have gone through 2001 to 2003 with Mr. Sabri owning that property may have some flaws in it. There have been a lot of building permits issued and I am not quite sure why in fact those were issued if there was all this other much larger issue outstanding. But none-the-less it seems to me the issue is that of the non-conforming use and whether or not the property has been continuously occupied since

1994, and I think that evidence is clear that it hasn't been and so I unfortunately am in favor of the motion.

Bloom: I am going to clarify with the motion maker and motion seconder, we are adopting the findings from the staff report with that motion.

Fields: It should state a conclusion from the staff findings.

Bloom: Just wanted to make that clear.

Morgan: I would like to make a statement here. I do agree with all the comments my colleagues have made. I don't see the proof that this building was in use for that time. I also struggle with the fact that you are tearing down two houses that have been there and Mr. Sabri has obviously put a lot of effort into those. I have driven past them and have seen the changes in the past couple of years. They are very nice changes that have been made. I guess this is a question for staff to respond to, obviously, looking at non-conforming use and providing a variance for it is precedent setting, but how precedent setting is it in this city that we have two large principal structures on such a small lot?

Blake Graham: I can't give you a count. It does happen. Really the strongest reason for the rule or prohibition on more than one principal residential structure on a zoning lot was so that we would prevent any further occurrences of these that result in the over-crowding, over-occupancy, over-parking, and over-impervious surfacing of zoning lots. I don't know how many there are. I am sure there are many. And they are all non-conforming. If those are discontinued and it comes to the city's attention that they are discontinued, because we are not out patrolling the streets for these necessarily, then they would be facing the same issue of this presumption of abandonment for a discontinuance of a year or longer. Then the burden would be on the property owner to rebut that presumption. Mr. Rand had asked a question about could it be made into two lots? And that was my first reaction, because I don't think this is any easy decision for the Board because we are looking at two houses. But the lot is simply too small to legally subdivide. It is just too small and would not meet our subdivision requirements.

Rand: You can find an exception and do a variance for two lots?

Blake Graham: Our subdivision regulations work hand-in-hand with our zoning ordinances and the zoning district regulates the minimum lot area and lot size. Again this lot is too small to meet the maximum variance authorized to establish two separate lots and several other variances for parking and lot coverage and surfacing and yards. It just doesn't fit. If the lot were larger, that would be a logical solution.

Fields: Mr. Graham has the subject been advanced to the city for a proposal to at least in some neighborhoods to allow more than one principal structure on residential?

Blake Graham: That is correct. There is a north Phillips overlay district that is in the area from I-94 south to 24th Street, and between 35W and Hiawatha, that does specifically authorize application as a conditional use permit process to an accessory dwelling. It is a dwelling unit over a garage, intending to emulate the old carriage house concept. Even if that were available here, which it is not, it is restricted strictly to that area of the city, it wouldn't qualify as an accessory dwelling, because it is not over a detached garage.

Bloom: That is based on the lot size? The lot size would probably be too small even in the Phillips neighborhood.

Blake Graham: Actually it might not be too small in Phillips, but it would be an entirely different scenario where it would be over a garage and be a much smaller accessory dwelling and this would far exceed that.

Von Bargaen: I just want to register my comment before we vote on this. In the past I have been very sympathetic with property owners who find themselves in awkward situations because they have acquired a property that has had questionable capacity for what they bought the property as. But in this case it just seems like sufficient notice to Mr. Sabri from neighbors as he was building things and from the records and city officials as it progressed. I don't find myself sympathetic.

Bloom: Board is done with discussion, could we have a roll call vote please?

Mr. Rand motioned to **deny** the nonconforming use certificate. Mr. Fields seconded the motion.

Bloom: Yes
Fields: Yes
Gates: Yes
Morgan: Yes
Rand: Yes
Von Bargaen: Yes

Motion: Carries

Minneapolis City Planning Department Report

Nonconforming Use Certificate

BZZ-1238

Date: August 6, 2003

Applicant: Azzam Omar Sabri

Address of Property: 2000 Fremont Avenue South and 1309 Franklin Avenue West

Date Application Deemed Complete: June 30, 2003

End of 60 Day Decision Period: August 29, 2003

Contact Person and Phone: Omar Sabri, 612-874-7525

Planning Staff and Phone: Carrie Flack, 651-673-3239

Ward: 7 **Neighborhood Organization:** Lowry Hill

Existing Zoning: R2B, Two family District

Request: To establish legal nonconforming rights for two principal residential structures on one zoning lot.

Zoning code section authorizing the request: 525.110 (3); Chapter 531

Background: City building permit records indicate that the single family structure at 1309 Franklin Avenue W was moved onto the property in 1908. A second single family structure (2000 Fremont Avenue S) was built on the property in 1911. In 1924, the city adopted its first Zoning Code. At that time, the property was zoned Commercial which allowed for residential uses and allowed two principal residential structures on one lot.

In 1963 the property was zoned R2B, Single, Two Family and Townhouse District. However, the 1963 Zoning Ordinance prohibited more than one principal detached residential structure per lot. Section 522.250, states, "Except in the case of planned residential developments and cluster developments, not more than one principal detached residential building shall be located on a zoning lot, nor shall a principal detached residential building be located on the same zoning lot with any other principal building."

The 1999 Zoning Ordinance identifies this property as R2B, Two family District. The 1999 Zoning Ordinance also limits the number of principal structures on one lot. Section 535.190, states, "Except in the case of cluster developments and planned unit developments, not more than one (1) principal residential structure shall be located on a zoning lot, nor shall a principal residential structure be located on the same zoning lot with any other principal structures.

Therefore, under both the 1963 and 1999 Zoning Codes the property was and is a nonconforming use. As a nonconforming use, it is subject to the applicable regulations of

Chapter 531, Nonconforming Uses and Structures, including regulations governing loss of nonconforming rights due to discontinuance of the use for more than one year.

In November 1998 the city attorney sent a letter to the previous owner of the property, Thomas Schwartz, stating that, “Although the property may have had nonconforming rights at some point in time, the information given to our office indicates that the property at 1309 West Franklin has not been used as a residence since December 1994. Under MCO Chapter 531 any previously existing nonconforming use would no longer exist and therefore, only one of the structures on the lot could be used as a principal residence.” In 1999 the previous owner was again notified that, “only one structure on this lot can be used as a principal residence. In order to establish nonconforming use rights for two principal structures, you must obtain a nonconforming use certificate from the Zoning Office.”

The current owner and applicant, Mr. Sabri, stated that when he purchased the dwellings he was unaware that the city had informed the previous owner that the nonconforming rights had been lost. The applicant believed that the homes were not being occupied and were non-conforming due to the condition of the homes. The city forwarded copies of both letters to the applicant who then began inquiring how to rectify the situation as suggested in the 1999 letter. In October 2001, the applicant obtained a building permit from the city to connect both structures with a breezeway in the hopes that both homes might then be able to be occupied. The applicant was then notified by the city that the permit was issued in error and the permit was revoked. In March of 2002, a city inspector discovered that 1309 Franklin Avenue was being occupied. The inspector sent a notice to the applicant informing him that he must comply with city codes and obtain a rental license before occupying the structure. The applicant completed all work necessary to comply with city codes and in May 2003 received an approved rental license for 1309 Franklin Avenue. The applicant is currently seeking a nonconforming use certificate to allow occupancy of both 1309 Franklin Avenue W and 2000 Fremont Avenue S.

Analysis: The question before the Board of Adjustment is whether the applicant has provided clear and convincing evidence that discontinuance of the nonconforming use for more than one year was due to circumstances beyond the property owner’s control, pursuant to section 531.40(3).

The applicant has stated that the previous owner did not intend to abandon the property, but was attempting to comply with city requirements. The applicant states that failure to apply for a nonconforming use certificate in 1999 was due to a property dispute between Mr. Schwartz and Mr. Cervasky that took place between 1999 and 2000. Upon the settlement of that case, ownership of the property went back to Mr. Cervasky who then sold the property to the applicant in 2001. The applicant states that he came forward to attempt to resolve issues with the property. The applicant maintains that the properties were not occupied due to circumstances beyond the control of the previous property owners due to financial issues and repairs that were being made to the properties.

City licensing records indicate that provisional rental licenses were issued for both structures between 1991 and 1999, except for 1997. The 1999 licenses were revoked shortly after issuance. In addition, building permits were issued for 2000 Fremont Avenue S in 2001, and for 1309 Franklin Avenue W in 1992, 1996, 1999, and 2001. The building permits for a breezeway connection between the two structures issued in 2001 were revoked shortly after issuance. The table below outlines the license and permit history of the property between 1991 and 2003:

1309 FRANKLIN AVE W

<u>Applicant</u>	<u>Date</u>	<u>Application</u>	<u>Outcome</u>
A. Omar Sabri	May 03	Rental license	DONE
A. Omar Sabri	May 14, 03	Building permit-replace kit sink	Issued
A. Omar Sabri	May 8, 03	Building permit-electrical	Issued
A. Omar Sabri	Oct 17, 01	Building permit-breezeway	Issued
A. Omar Sabri	Oct 19, 01	Building permit-breezeway	Revoked
A. Omar Sabri	Oct 12, 01	Building permit-reconstruct porch	Issued
A. Omar Sabri	Oct 31, 01	Building permit-general	Issued
Thomas Schwartz	Sep 99	Building permit-re-roof	Issued
Thomas Schwartz	Feb 99	Rental license	Denied
Glenn Cervasky	Jan 99	Rental license	Provisional
Glenn Cervasky	Feb 98	Rental license	Provisional
Glenn Cervasky	Oct 96	Rental license	Provisional
Electrical Contractor	Feb 96	Building permit-electrical	Issued
Glenn Cervasky	Oct 95	Rental license	Provisional
Glenn Cervasky	Dec 94	Violation-repairs, cease over occupancy	
Glenn Cervasky	Oct 94	Rental license	Provisional
Glenn Cervasky	Sep 93	Rental license	Provisional
Glenn Cervasky	Sep 92	Rental license	Provisional
	Aug 92	Permit-water	Issued
Glenn Cervasky	Sep 91	Rental license	Provisional
Glenn Cervasky	Apr 91	Rental license	Provisional

2000 FREMONT AVE S

<u>Applicant</u>	<u>Date</u>	<u>Application</u>	<u>Outcome</u>
A. Omar Sabri	May 03	Rental license	Provisional
A. Omar Sabri	Oct 17, 01	Building permit-breezeway	Issued
A. Omar Sabri	Oct 19, 01	Building permit-breezeway	Revoked
A. Omar Sabri	July 16, 01	Building permit-re-roof, int/ext paint	Issued
Thomas Schwartz	Feb 99	Rental license	Denied
Glenn Cervasky	Jan 99	Rental license	Provisional
Glenn Cervasky	Feb 98	Rental license	Provisional
Glenn Cervasky	Oct 96	Rental license	Provisional
Glenn Cervasky	Oct 95	Rental license	Provisional
Glenn Cervasky	Oct 94	Rental license	Provisional
Glenn Cervasky	Sep 93	Rental license	Provisional
Glenn Cervasky	Sep 92	Rental license	Provisional
Glenn Cervasky	Sep 91	Rental license	Provisional
Glenn Cervasky	Apr 91	Rental license	Provisional

Findings:

1. The two principal residential structures were lawfully established prior to adoption of the city's first Zoning Code in 1924.
2. The property became nonconforming in 1963 when the Zoning Code first prohibited two principal residential structures on a lot. It remains a nonconforming use under the 1999 Zoning Code.
3. In November 1998, the city attorney notified the property owner that the property had lost its nonconforming rights due to discontinuance of 1309 Franklin Avenue W as a residence since December 1994.
4. The actions to obtain rental licenses for both buildings in 1994, 1995, 1996, and 1998 is evidence that the property owner did not intend to abandon use of either structure during the period in question. Similarly, application for a building permit in 1996 for 1309 Franklin Avenue W is evidence that the property owner did not intend to abandon use of that structure.
5. Building permit and rental license applications by the applicant since 2001 is evidence that the applicant did not intend to abandon use of either structure since his purchase of the property.
6. Although there is evidence that the property owners did not intend to abandon the nonconforming use, there is insufficient evidence in the record to find that discontinuance of the nonconforming use was due to circumstances beyond the property owners' control.

Recommendation of the Minneapolis City Planning Department:

The City Planning Department makes **no recommendation** at this time to the Board of Adjustment regarding the application for nonconforming use certificate to establish legal nonconforming rights for the two principal single family residential structures.